

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH

SHIRLEY EXPRESS, LLC and
RLS TRANSPORTATION, LLC as a
single and/or joint employers

and

Case No. 22–CA–141644
Case No. 22–CA–149763

BUILDING MATERIAL TEAMSTERS LOCAL 282

Henry J. Powell, Esq.,
for the General Counsel.
Ronald L. Tobia, Esq.,
for the Respondent.
Travis Mastroddi, Esq.,
for the Charging Party.

DECISION AND ORDER

LAUREN ESPOSITO, Administrative Law Judge. On November 9, 2016, the Board issued a Decision and Order approving a formal settlement stipulation between Counsel for the General Counsel (General Counsel), Shirley Express, LLC and RLS Transportation, LLC as single and/or joint employers (Respondent), and Building Material Teamsters Local 282 (Charging Party), and entering a consent order in Cases 22–CA–141644 and 22–CA–149763. The consent order required in part that Respondent make whole Ariel Coira, Javier Madrid, Carlos Ruiz, Benjamin Pizzaro and Javier Diaz for wages lost because they were discharged in retaliation for their activities on behalf of Charging Party, with the amounts to be determined in a compliance hearing.

On October 25, 2017, the Regional Director, Region 22, issued a compliance specification and notice of hearing, and on November 28, 2017, Respondent filed an answer. This case was tried before me on February 6, 2018, in Newark, New Jersey, and at the hearing General Counsel introduced as part of the formal papers an amended compliance specification and notice of hearing. GC Exh. 3; Tr. 6-7. General Counsel further introduced a stipulation executed by Respondent and Charging Party providing that the methodology as set forth in the February 6, 2018 amended compliance stipulation to calculate the backpay owed to the discriminatees is valid and accurate. GC Exh. 2; Tr. 6-7. The stipulation further provides that Respondent does

not contest the backpay owed to each of the discriminatees, including interest, tax liability, gross backpay owed, interim expenses and interim earnings as of February 6, 2018, which consists of a total of \$88,848.00. GC Exh. 2; Tr. 6-7. The parties waived the filing of posthearing briefs, but requested until February 20, 2018, to attempt to reach a settlement. The parties were unable to settle the matter, and as a result I am issuing the instant Decision and Order.

The gross backpay due to the discriminatees – Ariel Coira, Javier Madrid, Carlos Ruiz, Benjamin Pizarro and Javier Diaz – is the amount of earnings they would have received but for Respondent’s discrimination against them. Pursuant to the February 6, 2018 amended compliance specification and the parties’ stipulation, the backpay periods for the discriminatees are as follows:

<u>Name</u>	<u>Backpay period</u>
Ariel Coira	Beginning November 23, 2014 and ending on July 8, 2014
Carlos Ruiz	Beginning November 23, 2014 and ending on July 8, 2015
Benjamin Pizzaro	Beginning November 24, 2014 and ending on July 8, 2015
Javier Madrid	Beginning November 23, 2014 and continuing until a valid offer of reinstatement
Javier Diaz	Beginning November 23, 2014 and continuing until a valid offer of reinstatement

GC Exh. 3, ¶ 1. The average earnings of comparable employees performing the same or similar work during the backpay periods set forth above constitutes an appropriate measure of the gross backpay due the discriminatees. Pursuant to the amended compliance specification and the parties’ stipulation, Formula Two, NLRB Casehandling Manual Part 3, Section 10540.3 was used to make this determination. Thus, gross backpay was computed on a calendar quarterly basis using Respondent’s payroll records for comparable employees that worked during the backpay periods set forth above. Pursuant to the amended compliance specification and the parties’ stipulation, calculations of a weekly payroll average based on Respondent’s November 2014 to December 2016 payroll records were used to determine average weekly payroll for the time period January 2017 to September 2017. GC Exh. 3, ¶ 3, appendix A; GC Exh. 2.

Net backpay is the difference between gross backpay based on the average earnings of comparable employees performing the same or similar work during the backpay periods discussed above, and the discriminatees’ interim earnings during the backpay periods. Pursuant to the amended compliance specification and the parties’ stipulation, appendix B to the amended compliance specification accurately sets forth the discriminatees’ interim earnings during the backpay period, and accurately indicates the amount of wages owed to each discriminatee for their respective backpay period. GC Exh. 3, ¶ 4–5, appendix B; GC Exh. 2. Pursuant to the amended compliance specification and the parties’ stipulation, appendix B also accurately sets forth interim expenses incurred by Javier Madrid during the backpay period, that Madrid would not have incurred but for Respondent’s unlawful conduct. GC Exh. 3, ¶ 6, appendix B; GC Exh. 2.

Pursuant to *Tortillas Don Chavas*, 361 NLRB 101 (2014), the discriminatees are entitled to compensation for the adverse tax consequences of receiving a lump-sum backpay award in a calendar year other than the year in which the income would have been earned had the Act not been violated. Pursuant to the amended compliance specification and the parties' stipulation, the compensation in the instant case which the lump-sum backpay award represents should have been earned in the years 2014 through 2017, as opposed to solely in 2018. Pursuant to the amended compliance specification and the parties' stipulation, the excess tax award for each discriminatee has been determined based upon the federal and state taxes calculated if the discriminatee had earned the relevant compensation throughout the backpay period, and the federal and state taxes calculated based upon the relevant lump-sum payment made solely in 2018. GC Exh. 3, ¶¶ 7–11, appendix B; GC Exh. 2.

Based upon the foregoing methodology for calculating the amounts due to the discriminatees pursuant to appendix B of the February 6, 2018 amended compliance specification and the parties' stipulation, the amounts owed are as follows:

<u>Name</u>	<u>Backpay Owed¹</u>	<u>Interest on Backpay</u>	<u>Interim Expenses</u>	<u>Excess Tax Liability</u>
Ariel Coira	\$27,363	\$3,026	---	\$587
Carlos Ruiz	\$4,307	\$517	---	\$86
Benjamin Pizarro	\$15,122	\$1,697	\$5,757	\$368
Javier Madrid	\$8,692	\$848	---	\$144
Javier Diaz	\$18,864	\$1,144	---	\$326

GC Exh. 3, appendix B; GC Exh. 2.

¹ Minus tax withholdings required by Federal and State law.

ORDER²

5 Shirley Express, LLC and RLS Transportation, LLC, as a single and/or joint
employers, its officer, agents, successors, and assigns, must pay to the individuals
below the amounts specified after their names.

	<u>Name</u>	<u>Backpay Owed</u> ³	<u>Interest on Backpay</u>	<u>Interim Expenses</u>	<u>Excess Tax Liability</u>
10	Ariel Coira	\$27,363	\$3,026	---	\$587
	Carlos Ruiz	\$4,307	\$517	---	\$86
	Benjamin Pizarro	\$15,122	\$1,697	\$5,757	\$368
	Javier Madrid	\$8,692	\$848	---	\$144
15	Javier Diaz	\$18,864	\$1,144	---	\$326

Dated, Washington, D.C., March 6, 2018

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Lauren Esposito
Administrative Law Judge

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

³ Minus tax withholdings required by Federal and State law.